
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0851.1/08

ATTY/TYPIST: KK:cro

BRIEF DESCRIPTION: Enacting the adult guardianship and protective proceedings jurisdiction act.

1 AN ACT Relating to adult guardianship and protective proceedings
2 jurisdiction; and adding a new chapter to Title 11 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be cited as the uniform
5 adult guardianship and protective proceedings jurisdiction act.

6 NEW SECTION. **Sec. 2.** In this chapter:

7 (1) "Adult" means an individual who has attained eighteen years of
8 age.

9 (2) "Conservator" means a person appointed by the court to
10 administer the property of an adult.

11 (3) "Guardian" means a person appointed by the court to make
12 decisions regarding the person of an adult.

13 (4) "Guardianship order" means an order appointing a guardian.

14 (5) "Guardianship proceeding" means a judicial proceeding in which
15 an order for the appointment of a guardian is sought or has been
16 issued.

17 (6) "Incapacitated person" means an adult for whom a guardian has
18 been appointed.

1 (7) "Party" means the respondent, petitioner, guardian,
2 conservator, or any other person allowed by the court to participate in
3 a guardianship or protective proceeding.

4 (8) "Person," except in the term incapacitated person or protected
5 person, means an individual, corporation, business trust, estate,
6 trust, partnership, limited liability company, association, joint
7 venture, public corporation, government or governmental subdivision,
8 agency, or instrumentality, or any other legal or commercial entity.

9 (9) "Protected person" means an adult for whom a protective order
10 has been issued.

11 (10) "Protective order" means an order appointing a conservator or
12 other order related to management of an adult's property.

13 (11) "Protective proceeding" means a judicial proceeding in which
14 a protective order is sought or has been issued.

15 (12) "Record" means information that is inscribed on a tangible
16 medium or that is stored in an electronic or other medium and is
17 retrievable in perceivable form.

18 (13) "Respondent" means an adult for whom a protective order or the
19 appointment of a guardian is sought.

20 (14) "State" means a state of the United States, the District of
21 Columbia, Puerto Rico, the United States Virgin Islands, a federally
22 recognized Indian tribe, or any territory or insular possession subject
23 to the jurisdiction of the United States.

24 NEW SECTION. **Sec. 3.** A court of this state may treat a foreign
25 country as if it were a state for the purpose of applying this chapter.

26 NEW SECTION. **Sec. 4.** (1) A court of this state may communicate
27 with a court in another state concerning a proceeding arising under
28 this chapter. The court may allow the parties to participate in the
29 communication. Except as otherwise provided in subsection (2) of this
30 section, the court shall make a record of the communication. The
31 record may be limited to the fact that the communication occurred.

32 (2) Courts may communicate concerning schedules, calendars, court
33 records, and other administrative matters without making a record.

34 NEW SECTION. **Sec. 5.** (1) In a guardianship or protective

1 proceeding in this state, a court of this state may request the
2 appropriate court of another state to do any of the following:

3 (a) Hold an evidentiary hearing;

4 (b) Order a person in that state to produce evidence or give
5 testimony pursuant to procedures of that state;

6 (c) Order that an evaluation or assessment be made of the
7 respondent;

8 (d) Order any appropriate investigation of a person involved in a
9 proceeding;

10 (e) Forward to the court of this state a certified copy of the
11 transcript or other record of a hearing under (a) of this subsection or
12 any other proceeding, any evidence otherwise produced under (b) of this
13 subsection, and any evaluation or assessment prepared in compliance
14 with an order under (c) or (d) of this subsection;

15 (f) Issue any order necessary to assure the appearance in the
16 proceeding of a person whose presence is necessary for the court to
17 make a determination, including the respondent or the incapacitated or
18 protected person;

19 (g) Issue an order authorizing the release of medical, financial,
20 criminal, or other relevant information in that state, including
21 protected health information as defined in 45 C.F.R. Sec. 164.504.

22 (2) If a court of another state in which a guardianship or
23 protective proceeding is pending requests assistance of the kind
24 provided in subsection (1) of this section, a court of this state has
25 jurisdiction for the limited purpose of granting the request or making
26 reasonable efforts to comply with the request.

27 NEW SECTION. Sec. 6. (1) In a guardianship or protective
28 proceeding, in addition to other procedures that may be available,
29 testimony of a witness who is located in another state may be offered
30 by deposition or other means allowable in this state for testimony
31 taken in another state. The court on its own motion may order that the
32 testimony of a witness be taken in another state and may prescribe the
33 manner in which and the terms upon which the testimony is to be taken.

34 (2) In a guardianship or protective proceeding, a court in this
35 state may permit a witness located in another state to be deposed or to
36 testify by telephone or audiovisual or other electronic means. A court

1 of this state shall cooperate with the court of the other state in
2 designating an appropriate location for the deposition or testimony.

3 (3) Documentary evidence transmitted from another state to a court
4 of this state by technological means that do not produce an original
5 writing may not be excluded from evidence on an objection based on the
6 best evidence rule.

7 NEW SECTION. **Sec. 7.** (1) In this chapter:

8 (a) "Emergency" means a circumstance that likely will result in
9 substantial harm to a respondent's health, safety, or welfare, and for
10 which the appointment of a guardian is necessary because no other
11 person has authority and is willing to act on the respondent's behalf.

12 (b) "Home state" means the state in which the respondent was
13 physically present, including any period of temporary absence, for at
14 least six consecutive months immediately before the filing of a
15 petition for a protective order or the appointment of a guardian; or if
16 none, the state in which the respondent was physically present,
17 including any period of temporary absence, for at least six consecutive
18 months ending within the six months prior to the filing of the
19 petition.

20 (c) "Significant-connection state" means a state, other than the
21 home state, with which a respondent has a significant connection other
22 than mere physical presence and in which substantial evidence
23 concerning the respondent is available.

24 (2) In determining under sections 9 and 16(5) of this act whether
25 a respondent has a significant connection with a particular state, the
26 court shall consider:

27 (a) The location of the respondent's family and other persons
28 required to be notified of the guardianship or protective proceeding;

29 (b) The length of time the respondent at any time was physically
30 present in the state and the duration of any absence;

31 (c) The location of the respondent's property; and

32 (d) The extent to which the respondent has ties to the state such
33 as voting registration, state or local tax return filing, vehicle
34 registration, driver's license, social relationship, and receipt of
35 services.

1 NEW SECTION. **Sec. 8.** This chapter provides the exclusive
2 jurisdictional basis for a court of this state to appoint a guardian or
3 issue a protective order for an adult.

4 NEW SECTION. **Sec. 9.** A court of this state has jurisdiction to
5 appoint a guardian or issue a protective order for a respondent if:

6 (1) This state is the respondent's home state;

7 (2) On the date the petition is filed, this state is a significant-
8 connection state and:

9 (a) The respondent does not have a home state or a court of the
10 respondent's home state has declined to exercise jurisdiction because
11 this state is a more appropriate forum; or

12 (b) The respondent has a home state, a petition for an appointment
13 or order is not pending in a court of that state or another
14 significant-connection state, and, before the court makes the
15 appointment or issues the order:

16 (i) A petition for an appointment or order is not filed in the
17 respondent's home state;

18 (ii) An objection to the court's jurisdiction is not filed by a
19 person required to be notified of the proceeding; and

20 (iii) The court in this state concludes that it is an appropriate
21 forum under the factors set forth in section 12 of this act;

22 (3) This state does not have jurisdiction under either subsection
23 (1) or (2) of this section, the respondent's home state and all
24 significant-connection states have declined to exercise jurisdiction
25 because this state is the more appropriate forum, and jurisdiction in
26 this state is consistent with the constitutions of this state and the
27 United States; or

28 (4) The requirements for special jurisdiction under section 10 of
29 this act are met.

30 NEW SECTION. **Sec. 10.** (1) A court of this state lacking
31 jurisdiction under section 9 of this act has special jurisdiction to do
32 any of the following:

33 (a) Appoint a guardian in an emergency for a term not exceeding
34 ninety days for a respondent who is physically present in this state;

35 (b) Issue a protective order with respect to real or tangible
36 personal property located in this state;

1 (c) Appoint a guardian or conservator for an incapacitated or
2 protected person for whom a provisional order to transfer the
3 proceeding from another state has been issued under procedures similar
4 to section 16 of this act.

5 (2) If a petition for the appointment of a guardian in an emergency
6 is brought in this state and this state was not the respondent's home
7 state on the date the petition was filed, the court shall dismiss the
8 proceeding at the request of the court of the home state, if any,
9 whether dismissal is requested before or after the emergency
10 appointment.

11 NEW SECTION. **Sec. 11.** Except as otherwise provided in section 10
12 of this act, a court that has appointed a guardian or issued a
13 protective order consistent with this chapter has exclusive and
14 continuing jurisdiction over the proceeding until it is terminated by
15 the court or the appointment or order expires by its own terms.

16 NEW SECTION. **Sec. 12.** (1) A court of this state having
17 jurisdiction under section 9 of this act to appoint a guardian or issue
18 a protective order may decline to exercise its jurisdiction if it
19 determines at any time that a court of another state is a more
20 appropriate forum.

21 (2) If a court of this state declines to exercise its jurisdiction
22 under subsection (1) of this section, it shall either dismiss or stay
23 the proceeding. The court may impose any condition the court considers
24 just and proper, including the condition that a petition for the
25 appointment of a guardian or issuance of a protective order be filed
26 promptly in another state.

27 (3) In determining whether it is an appropriate forum, the court
28 shall consider all relevant factors, including:

29 (a) Any expressed preference of the respondent;

30 (b) Whether abuse, neglect, or exploitation of the respondent has
31 occurred or is likely to occur and which state could best protect the
32 respondent from the abuse, neglect, or exploitation;

33 (c) The length of time the respondent was physically present in or
34 was a legal resident of this or another state;

35 (d) The distance of the respondent from the court in each state;

36 (e) The financial circumstances of the respondent's estate;

- 1 (f) The nature and location of the evidence;
- 2 (g) The ability of the court in each state to decide the issue
- 3 expeditiously and the procedures necessary to present evidence;
- 4 (h) The familiarity of the court of each state with the facts and
- 5 issues in the proceeding; and
- 6 (i) If an appointment were made, the court's ability to monitor the
- 7 conduct of the guardian or conservator.

8 NEW SECTION. **Sec. 13.** (1) If at any time a court of this state

9 determines that it acquired jurisdiction to appoint a guardian or issue

10 a protective order because of unjustifiable conduct, the court may:

- 11 (a) Decline to exercise jurisdiction;
- 12 (b) Exercise jurisdiction for the limited purpose of fashioning an
- 13 appropriate remedy to ensure the health, safety, and welfare of the
- 14 respondent or the protection of the respondent's property or prevent a
- 15 repetition of the unjustifiable conduct, including staying the
- 16 proceeding until a petition for the appointment of a guardian or
- 17 issuance of a protective order is filed in a court of another state
- 18 having jurisdiction; or
- 19 (c) Continue to exercise jurisdiction after considering:
- 20 (i) The extent to which the respondent and all persons required to
- 21 be notified of the proceedings have acquiesced in the exercise of the
- 22 court's jurisdiction;
- 23 (ii) Whether it is a more appropriate forum than the court of any
- 24 other state under the factors set forth in section 12(3) of this act;
- 25 and
- 26 (iii) Whether the court of any other state would have jurisdiction
- 27 under factual circumstances in substantial conformity with the
- 28 jurisdictional standards of section 9 of this act.

29 (2) If a court of this state determines that it acquired

30 jurisdiction to appoint a guardian or issue a protective order because

31 a party seeking to invoke its jurisdiction engaged in unjustifiable

32 conduct, it may assess against that party necessary and reasonable

33 expenses, including attorneys' fees, investigative fees, court costs,

34 communication expenses, witness fees and expenses, and travel expenses.

35 The court may not assess fees, costs, or expenses of any kind against

36 this state or a governmental subdivision, agency, or instrumentality of

37 this state unless authorized by law other than this act.

1 NEW SECTION. **Sec. 14.** If a petition for the appointment of a
2 guardian or issuance of a protective order is brought in this state and
3 this state was not the respondent's home state on the date the petition
4 was filed, in addition to complying with the notice requirements of
5 this state, notice of the petition must be given to those persons who
6 would be entitled to notice of the petition if a proceeding were
7 brought in the respondent's home state. The notice must be given in
8 the same manner as notice is required to be given in this state.

9 NEW SECTION. **Sec. 15.** Except for a petition for the appointment
10 of a guardian in an emergency or issuance of a protective order limited
11 to property located in this state under section 10(1) (a) or (b) of
12 this act, if a petition for the appointment of a guardian or issuance
13 of a protective order is filed in this state and in another state and
14 neither petition has been dismissed or withdrawn, the following rules
15 apply:

16 (1) If the court in this state has jurisdiction under section 9 of
17 this act, it may proceed with the case unless a court in another state
18 acquires jurisdiction under provisions similar to section 9 of this act
19 before the appointment or issuance of the order.

20 (2) If the court in this state does not have jurisdiction under
21 section 9 of this act, whether at the time the petition is filed or at
22 any time before the appointment or issuance of the order, the court
23 shall stay the proceeding and communicate with the court in the other
24 state. If the court in the other state has jurisdiction, the court in
25 this state shall dismiss the petition unless the court in the other
26 state determines that the court in this state is a more appropriate
27 forum.

28 NEW SECTION. **Sec. 16.** (1) A guardian or conservator appointed in
29 this state may petition the court to transfer the guardianship or
30 conservatorship to another state.

31 (2) Notice of a petition under subsection (1) of this section must
32 be given to the persons that would be entitled to notice of a petition
33 in this state for the appointment of a guardian or conservator.

34 (3) On the court's own motion or on request of the guardian or
35 conservator, the incapacitated or protected person, or other person

1 required to be notified of the petition, the court shall hold a hearing
2 on a petition filed pursuant to subsection (1) of this section.

3 (4) The court shall issue an order provisionally granting a
4 petition to transfer a guardianship and shall direct the guardian to
5 petition for guardianship in the other state if the court is satisfied
6 that the guardianship will be accepted by the court in the other state
7 and the court finds that:

8 (a) The incapacitated person is physically present in or is
9 reasonably expected to move permanently to the other state;

10 (b) An objection to the transfer has not been made or, if an
11 objection has been made, the objector has not established that the
12 transfer would be contrary to the interests of the incapacitated
13 person; and

14 (c) Plans for care and services for the incapacitated person in the
15 other state are reasonable and sufficient.

16 (5) The court shall issue a provisional order granting a petition
17 to transfer a conservatorship and shall direct the conservator to
18 petition for conservatorship in the other state if the court is
19 satisfied that the conservatorship will be accepted by the court of the
20 other state and the court finds that:

21 (a) The protected person is physically present in or is reasonably
22 expected to move permanently to the other state, or the protected
23 person has a significant connection to the other state considering the
24 factors in section 7(2) of this act;

25 (b) An objection to the transfer has not been made or, if an
26 objection has been made, the objector has not established that the
27 transfer would be contrary to the interests of the protected person;
28 and

29 (c) Adequate arrangements will be made for management of the
30 protected person's property.

31 (6) The court shall issue a final order confirming the transfer and
32 terminating the guardianship or conservatorship upon its receipt of:

33 (a) A provisional order accepting the proceeding from the court to
34 which the proceeding is to be transferred which is issued under
35 provisions similar to section 17 of this act; and

36 (b) The documents required to terminate a guardianship or
37 conservatorship in this state.

1 NEW SECTION. **Sec. 17.** (1) To confirm transfer of a guardianship
2 or conservatorship transferred to this state under provisions similar
3 to section 16 of this act, the guardian or conservator must petition
4 the court in this state to accept the guardianship or conservatorship.
5 The petition must include a certified copy of the other state's
6 provisional order of transfer.

7 (2) Notice of a petition under subsection (1) of this section must
8 be given to those persons that would be entitled to notice if the
9 petition were a petition for the appointment of a guardian or issuance
10 of a protective order in both the transferring state and this state.
11 The notice must be given in the same manner as notice is required to be
12 given in this state.

13 (3) On the court's own motion or on request of the guardian or
14 conservator, the incapacitated or protected person, or other person
15 required to be notified of the proceeding, the court shall hold a
16 hearing on a petition filed pursuant to subsection (1) of this section.

17 (4) The court shall issue an order provisionally granting a
18 petition filed under subsection (1) of this section unless:

19 (a) An objection is made and the objector establishes that transfer
20 of the proceeding would be contrary to the interests of the
21 incapacitated or protected person; or

22 (b) The guardian or conservator is ineligible for appointment in
23 this state.

24 (5) The court shall issue a final order accepting the proceeding
25 and appointing the guardian or conservator as guardian or conservator
26 in this state upon its receipt from the court from which the proceeding
27 is being transferred of a final order issued under provisions similar
28 to section 16 of this act transferring the proceeding to this state.

29 (6) Not later than ninety days after issuance of a final order
30 accepting transfer of a guardianship or conservatorship, the court
31 shall determine whether the guardianship or conservatorship needs to be
32 modified to conform to the law of this state.

33 (7) In granting a petition under this section, the court shall
34 recognize a guardianship or conservatorship order from the other state,
35 including the determination of the incapacitated or protected person's
36 incapacity and the appointment of the guardian or conservator.

37 (8) The denial by a court of this state of a petition to accept a
38 guardianship or conservatorship transferred from another state does not

1 affect the ability of the guardian or conservator to seek appointment
2 as guardian or conservator in this state if the court has jurisdiction
3 to make an appointment other than by reason of the provisional order of
4 transfer.

5 NEW SECTION. **Sec. 18.** If a guardian has been appointed in another
6 state and a petition for the appointment of a guardian is not pending
7 in this state, the guardian appointed in the other state, after giving
8 notice to the appointing court of an intent to register, may register
9 the guardianship order in this state by filing as a foreign judgment in
10 a court, in any appropriate county of this state, certified copies of
11 the order and letters of office.

12 NEW SECTION. **Sec. 19.** If a conservator has been appointed in
13 another state and a petition for a protective order is not pending in
14 this state, the conservator appointed in the other state, after giving
15 notice to the appointing court of an intent to register, may register
16 the protective order in this state by filing as a foreign judgment in
17 a court of this state, in any county in which property belonging to the
18 protected person is located, certified copies of the order and letters
19 of office and of any bond.

20 NEW SECTION. **Sec. 20.** (1) Upon registration of a guardianship or
21 protective order from another state, the guardian or conservator may
22 exercise in this state all powers authorized in the order of
23 appointment except as prohibited under the laws of this state,
24 including maintaining actions and proceedings in this state and, if the
25 guardian or conservator is not a resident of this state, subject to any
26 conditions imposed upon nonresident parties.

27 (2) A court of this state may grant any relief available under this
28 act and other law of this state to enforce a registered order.

29 NEW SECTION. **Sec. 21.** In applying and construing this uniform
30 act, consideration must be given to the need to promote uniformity of
31 the law with respect to its subject matter among states that enact it.

32 NEW SECTION. **Sec. 22.** This act modifies, limits, and supersedes
33 the federal electronic signatures in global and national commerce act,

1 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede
2 section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic
3 delivery of any of the notices described in section 103(b) of that act,
4 15 U.S.C. Sec. 7003(b).

5 NEW SECTION. **Sec. 23.** (1) This act applies to guardianship and
6 protective proceedings begun on or after the effective date of this
7 act.

8 (2) Sections 1 through 6 and 16 through 22 apply to proceedings
9 filed on or after January 1, 2010, regardless of whether a guardianship
10 or protective order has been issued.

11 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act
12 constitute a new chapter in Title 11 RCW.

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